IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

MFA.No. 1295 of 2001(B)

OP(MV).1367/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA
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APPELLANT: PETITIONER

SAJI PETER @ JOSE PETER,
S/O. PETER @ BAB Y, PUTHENPURACKAL HOUSE,
VELIYACHAL, THOTTEKKADU P.O.,
KEERAMPARA VILLAGE.

BY ADV. SRI.SIBY MATHEW
SMT.ANNIE PAUL

RESPONDENTS: RESPONDENTS 1 TO 4
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1. **SHAMSUDHIN K.P.,**
KUNDUKULAM HOUSE, NELLIKUZHI,
KOTHAMANGALAM.

2. **REJIMON ,**
S/O. KUNJU BAVA, PANACKAL HOUSE,
CHELLIYAMPARA, VELLATHOOVAL.

3. **THE BRANCH MANAGER,**
THE ORIENTAL INSURANCE COMPANY LTD.,
CHURCH VIEW JUNCTION, KOTHAMANGALAM.

4. **THE BRANCH MANAGER,**
THE ORIENTAL INSURANCE COMPANY LTD.,
CHURCH VIEW JUNCTION,
KOTHAMANGALAM.

R3 BY ADV. SRI.ANCHAL C.VIJAYAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/12/2007, ALONG WITH MFA NO. 1294 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A.No. 1295 of 2001

Dated this the 18th day of December, 2007

Judgment

Koshy,J.

Appellant while travelling as a pillion rider in a motor cycle on 16.7.1999 sustained injuries when the motor cycle was hit by a jeep bearing registration No. KLI 6192. He was taken to St. Joseph's Hospital, Kothamangalam and thereafter to Medical Mission Hospital, Kolencherry where he was treated as an inpatient till 10.9.1999. He filed application for compensation for an amount of Rs.3,00,000/= alleging negligence on the part of the second respondent driver of the jeep. From the evidence adduced in this case, the tribunal found that the accident occurred due to the negligence of the driver of the jeep and the jeep was insured by the third respondent insurance company. However, only Rs.1,06,042/- was awarded by the tribunal. Only quantum of compensation is disputed in this appeal.

2. Immediately after the accident, appellant was taken to St. Joseph's Hospital, Kothamangalam and from there to Medical Mission Hospital, Kolencherry. He was under treatment in the

Medical Mission Hospital from 16.7.1999 to 18.9.1999 and after discharge he was again admitted on 29.9.1999 till 7.10.1999. Further, he was sent to the Medical College Hospital, Kottayam. He was under treatment there from 22.5.2000 to 29.6.2000. He had fracture both bone (L) forearm and compound fracture both bone (L) leg. There was deep wound on his forehead. He underwent operation on 17.7.1999 and steel implant was inserted. Further, on 28.7.1999, his hand was operated for joining both bone and plaster cast was applied on 30.3.2000. In spite of the treatment, his left leg sustained disability and muscle of the left leg sustained weakness and numbness and swelling is felt at his legs. He cannot squat properly due to the disability and for moving he has to use belt. The length of the leg also has been decreased after the treatment. Copy of accident register-cum-wound certificate is Ext.A8. Treatment certificate issued from M.O.S.C.M.M. Hospital, Kolencherry is Ext.A9. Copy of discharge certificate issued from M.O.S.C.M.M. Hospital, Kolencherry is Ext.A10, discharge summary issued from M.O.S.C.Medical Mission Hospital, Kolencherry is Ext.A11, discharge card issued from Medical College Hospital is Ext.A12 and medical bills issued from M.O.S.C. Medical Mission Hospital, Kolencherry are Ext.A13 series and disability certificate issued from St. George Hospital, Muvattupuzha is Ext.A14. PW3 doctor proved Ext.A14

disability certificate. He certified that petitioner sustained disability at 18%. Tribunal found that he was under treatment for 10 months. But, tribunal did not accept the disability certificate and assessed disability at 8%. For disagreeing with the medical certificate, only reason stated by the tribunal is that it was not issued by the Medical Board. If the tribunal was not accepting Ext.A14 disability certificate proved by PW3 doctor, tribunal should have sent the claimant for examination by a medical board. We see no reason to reject the properly proved medical certificate assessing functional permanent disability at 18%. The tribunal has fixed only Rs.1,500/- as monthly income. Appellant claimed that he was a casual labourer and getting a monthly income of Rs.4,500/- per month. It was argued that if the minimum wages of a manual labourer in Kerala is taken, he will get more than Rs.2,500/- a month. In the absence of any data or definite evidence we are not interfering with the assessment of monthly income by the tribunal. Claimant was aged 27 years only at the time of accident. The tribunal has taken 18 as the multiplier taking guidance from the second schedule. We see no ground to enhance the multiplier. Hence, compensation payable for disability and loss of earning power is Rs.1500 x 12 x 18 x $\frac{18}{100}$ = Rs.58,320/-. Tribunal has granted Rs.25,920/- for disability and

Rs.7,000/- for loss of earning power. (Total Rs.32,920/-). Hence, additional compensation payable will be Rs.25,400/-. It was argued that compensation awarded for pain and suffering, reimbursement granted for medical expenses, loss of amenities etc. are inadequate. We are of the view that compensation awarded under other heads are just and reasonable. In the above circumstances, third respondent insurance company is directed to deposit Rs.25,400/- with 7.5% interest from the date of application till deposit over and above the compensation decreed by the tribunal. On deposit of the amount, appellant is allowed to withdraw the same.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1295 of 2001

Judgment

Dated:18th December, 2007